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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/583,626	05/31/2000	Zubair Mirza	602927.090085	4023

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EXAMINER

SPISICH, MARK

ART UNIT	PAPER NUMBER
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1744

9

DATE MAILED: 03/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant(s)

09/583,626

Applicant(s)

MIRZA ET AL.

Examiner

Mark Spisich

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 11-13, 19-24 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14-18, 25 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 May 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of the species of fig 11 in Paper No. 7 is acknowledged.
2. Claims 11-13, 19-24 and 26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7. The elected embodiment (fig 11) has a head and handle which are two separate elements, as opposed to the single continuous molded product recited in claim 13. Thus, claim 13 has been further withdrawn from consideration as being drawn to a non-elected species.

### ***Drawings***

3. The drawings are objected to because (1) the (a), (b) and (c) on sheet 6 should be removed; and (2) figure 12 should be separately labeled or broken up into two distinct figures (eg, fig 12(a) and fig 12(b)). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. The disclosure is objected to because of the following informalities: there is no "brief description" of figures 4b thru 4i.

Appropriate correction is required.

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***Claim Rejections - 35 USC § 112***

5. Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "Exceeding a" (claim 28, line 4) is awkward/confusing.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

7. A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,2,5,6 and 27-30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Dirksing (USP 5,355,544).

9. Claims 1,2,6,9,10,14-18,25 and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Hukuba (USP 5,406,664). See figures 11-13 and column 8, line 46 thru column 9, line 20.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3,4,7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hukuba (USP 5,406,664). The patent to Hukuba discloses a toothbrush

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comprising a handle (12) and a bristled head (10) which is "normally" in a first orientation (a1 in fig 11) and which, upon the application of a predetermined force, pivots to a second orientation (a2 or a3). The particular angle (claims 3 and 4) and the particular amount of force (claims 7 and 8) would be obvious choices of design depending on the desired brushing pressure and desired angular relationship relative to the handle (12).

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited patents are pertinent to brushes with some type of pivoting connection with DT '476 and the US patents (with the exception of Farris and De La Tour) pertinent to toothbrushes with means to control brushing pressure and De La Tour and FR '009 to angularly adjustable heads and Farris to the coupling connection of figure 11.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read "Mark Spisich".

Mark Spisich  
Primary Examiner  
Art Unit 1744

MS  
March 19, 2003